

BEFORE THE
ADMINISTRATIVE HEARING COMMISSION
STATE OF MISSOURI

FILED

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MISSOURI REAL ESTATE COMMISSION)

ADMINISTRATIVE HEARING
COMMISSION

Petitioner,)

v.)

No. 15-0337 RE

RENTAL INVESTMENT MANAGEMENT)
SERVICES, L.L.C.,)

and)

HAROLD WESTERMAN,)

Respondents.)

JOINT MOTION FOR CONSENT ORDER,
JOINT STIPULATION OF FACTS AND CONCLUSIONS OF LAW,
WAIVER OF HEARINGS
BEFORE THE ADMINISTRATIVE HEARING COMMISSION
AND THE MISSOURI REAL ESTATE COMMISSION,
AND DISCIPLINARY ORDER

Respondents Rental Investment Management Services, LLC ("RIMS") and Harold Westerman ("Westerman") (hereby collectively referred to as "Respondents") and Petitioner the Missouri Real Estate Commission ("MREC") enter into this *Joint Motion for Consent Order, Joint Stipulation of Facts and Conclusions of Law, Waiver of Hearings Before the Administrative Hearing Commission and Missouri Real Estate Commission, and Disciplinary Order* ("Joint Stipulation") for the purpose of resolving

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the Complaint filed against Respondents. Pursuant to the rules governing practice and procedure before the Administrative Hearing Commission ("Commission"), pursuant to 1 CSR 15-3.446(4), and pursuant to the terms of § 536.060, RSMo¹, as it is made applicable to the Commission by § 621.135, RSMo, the parties move for a consent order and waive the right to a hearing and decision in the above-styled case by the Commission, and, additionally, the right to a disciplinary hearing before the MREC pursuant to § 621.110, RSMo Supp. 2013 and jointly stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondents acknowledge that they understand the various rights and privileges afforded them by law, including the right to a hearing of the charges against them; the right to appear and be represented by legal counsel; the right to have all charges proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing against them at the hearing; the right to present evidence on their behalf at the hearing; the right to a decision upon the record of the hearing by a fair and impartial administrative hearing commissioner concerning the charges pending against them; the right to a ruling on questions of law by the Administrative Hearing Commission; the right to a disciplinary hearing before the MREC at which time Respondents may present evidence in mitigation of discipline; the right to a claim for attorney fees and expenses; and the right to obtain judicial review of the decisions of the Administrative Hearing Commission and the MREC. Being aware of these rights

¹All references are to the 2000 Revised Statutes of Missouri unless otherwise noted.

provided Respondents by operation of law, Respondents knowingly and voluntarily waive each and every one of these rights and freely enters into this Joint Stipulation. Respondents further agree to abide by the terms of this document as they pertain to them.

Respondents acknowledge that they received a copy of the Complaint in this case, which was filed with the Commission on March 13, 2015. The parties stipulate that the factual allegations contained in this Joint Stipulation are true and stipulate that Respondent Westerman's licenses as a real estate broker/associate, Nos. 1999010288, 2003010127, and 2005037909, and RIMS' license as a real estate association, license no. 2005037345, are subject to disciplinary action by the MREC in accordance with the provisions of Chapter 621, RSMo, as amended and § 339.100.2, RSMo Supp. 2013.

I. JOINT STIPULATION

Based upon the foregoing, the MREC and Respondents jointly stipulate to the following findings of fact and conclusions of law in lieu of the facts and conclusions of law as alleged in the Complaint filed in this case, and request that the Commission adopt the Joint Proposed Findings of Fact and the Joint Proposed Conclusions of Law as the Commission's Findings of Fact and Conclusions of Law.

JOINT PROPOSED FINDINGS OF FACT **AND** **JOINT PROPOSED CONCLUSIONS OF LAW**

The parties hereby incorporate this Commission's December 14, 2015, Order

finding cause for discipline under Section 339.100, RSMo, Supp. 2013 based on the findings of fact set forth therein.

II. JOINT DISCIPLINARY ORDER

Based on the foregoing, the parties hereby mutually agree and stipulate that the following shall constitute the order regarding discipline of Respondents' licenses as a real estate broker, broker associate and a real estate association, subject to the following terms and conditions, and entered by the MREC in this matter under the authority of §§ 536.060 and 621.110, RSMo Supp. 2013. This disciplinary order shall become effective immediately upon the issuance of the consent order of the Commission without further action by either party:

1. **Respondents' licenses are on probation.** Respondents' licenses as a real estate broker, broker associate, and real estate association licenses are hereby placed on PROBATION for a period of FIVE YEARS. The period of probation shall constitute the "disciplinary period." During the disciplinary period, Respondents shall be entitled to practice as a real estate broker, broker associate, or real estate association under Chapter 339, RSMo, as amended, provided Respondents adheres to all the terms of this agreement.

2. **Terms and conditions of the disciplinary period.** The terms and conditions of the disciplinary period are as follows:

(A) Respondents shall keep the MREC apprised at all times in writing of their current addresses and telephone numbers at each

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place of residence and business. Respondents shall notify the MREC in writing within ten (10) days of any change in this information.

(B) Respondents shall timely renew their real estate licenses, timely pay all fees required for license renewal and shall comply with all other requirements necessary to maintain their licenses in a current and active status. During the disciplinary period, Respondents shall not place their real estate licenses on inactive status as would otherwise be allowed under or 20 CSR 2250-4.040. Alternatively, without violating the terms and conditions of this Settlement Agreement, Respondents may surrender their real estate licenses by submitting a letter to the MREC and complying with 20 CSR 2250-8.155. If Respondents apply for a real estate license after surrender, Respondents shall be required to requalify as if an original applicant and the MREC will not be precluded from basing its decision, wholly or partially, on the findings of fact, conclusions of law, and discipline set forth in this Settlement Agreement.

(C) Respondents shall meet in person with the MREC or its representative on any business day, during business hours, and

either at Respondents' place of business or at MREC's place of business as required by the MREC or its designee upon notification from the MREC or its designee. Any exceptions would be made by mutual agreement of the parties. Said meetings will otherwise be at the MREC's discretion and may occur periodically during the probation period.

(D) Respondents shall immediately submit documents showing compliance with the requirements of this Settlement Agreement to the MREC when requested by the MREC or its designee.

(E) During the probationary period, Respondents shall accept and comply with unannounced visits from the MREC's representatives to monitor compliance with the terms and conditions of this Settlement Agreement.

(F) Respondents shall comply with all relevant provisions of Chapter 339, RSMo, as amended; all rules and regulations of the MREC; and all local, state, and federal laws. "State" as used herein refers to the State of Missouri and all other states and territories of the United States. Any cause to discipline Respondents' licenses under Section 339.100.2, RSMo, that occurs

during the disciplinary period shall also constitute a violation of this Settlement Agreement.

(G.) Respondent Westerman shall report to the MREC each occurrence of Westerman's being finally adjudicated and found guilty, or entering a plea of guilty or nolo contendere, in a state or federal criminal prosecution, to felony or misdemeanor offenses, within ten business days of each such occurrence.

(H) Broker Acknowledgement. If at any time during the disciplinary period Respondent Westerman wishes to transfer his license affiliation to a new broker/brokerage, he must submit a Broker Acknowledgment form signed by the new broker. This acknowledgement is in addition to any other required application, fee, and documentation necessary to transfer his license. Respondents must obtain the Broker Acknowledgement form from the MREC.

(I) If at any time during the disciplinary period Respondent Westerman sells RIMS, Westerman and RIMS must submit proof to the MREC that Westerman provided notice to the purchaser that RIMS' real estate association license is under probation and the terms of probation.

(J) Upon the expiration of the disciplinary period, the license of Respondents shall be fully restored if all requirements of law have been satisfied; provided, however, that in the event the MREC determines that Respondents have violated any term or condition of this Joint Stipulation, the MREC may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and impose such further discipline as it shall deem appropriate under § 324.042, RSMo.

3. No additional discipline shall be imposed by the MREC pursuant to the preceding paragraph of this Joint Stipulation without notice and opportunity for hearing before the MREC as a contested case in accordance with the provisions of Chapter 536, RSMo.

4. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning any future violations by Respondents of Chapter 339, RSMo, as amended, or the regulations promulgated thereunder, or of the terms and conditions of this Joint Stipulation.

5. This Joint Stipulation does not bind the MREC or restrict the remedies available to it concerning facts or conduct not specifically mentioned in this Joint Stipulation that are either now known to the MREC or may be discovered.

6. If any alleged violation of this Joint Stipulation occurred during the disciplinary period, the parties agree that the MREC may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be

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held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Respondents agree and stipulates that the MREC has continuing jurisdiction to hold a hearing to determine if a violation of this Joint Stipulation has occurred.

7. Each party agrees to pay all their own fees and expenses incurred as a result of this case, its litigation, and/or its settlement.

8. The terms of this Joint Stipulation are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this Joint Stipulation nor any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

9. The parties to this Joint Stipulation understand that the MREC will maintain this Joint Stipulation as an open record of the MREC as required by Chapters 339, 610, and 324, RSMo, as amended.

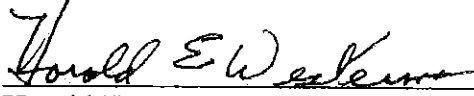
10. Respondents, together with their heirs, assigns, agents, partners, shareholders, officers, directors, employees, representatives and attorneys, does hereby waive, release, acquit and forever discharge the MREC, its respective members, employees, agents and attorneys including former members, employees, agents and attorneys, of, or from any liability, claim, actions, causes of action, fees, costs, expenses and compensation, including, but not limited to, any claim for attorney's fees and expenses, whether or not now known or contemplated, including, but not limited to, any

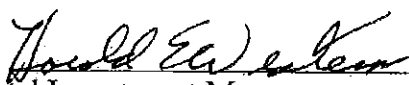
claims pursuant to § 536.087, RSMo, as amended, or any claim arising under 42 U.S.C. § 1983, which now or in the future may be based upon, arise out of, or relate to any of the matters raised in this case or its litigation, or from the negotiation or execution of this Joint Stipulation. The parties acknowledge that this paragraph is severable from the remaining portions of the Joint Stipulation in that it survives in perpetuity even in the event that any court or administrative tribunal deems this agreement or any portion thereof void or unenforceable.

III. CONCLUSION

In consideration of the foregoing, the parties consent to the entry of record and approval of this Joint Stipulation and to the termination of any further proceedings before the Commission based upon the complaint filed by the MREC in the above-captioned cause.

RESPONDENT



Harold Westerman 2/26/16
Date

By: 
Rental Investment Management 2/26/16
Services, LLC Date

Name:

Title:

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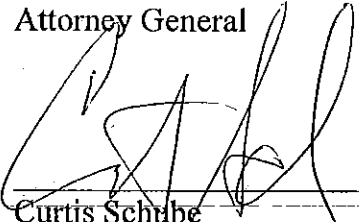
ATTORNEYS FOR RESPONDENT

PETITIONER

Missouri Real Estate Commission

By: 
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Executive Director Date

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